IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

WA.No. 1966 of 2005(B)

AGAINST THE JUDGEMENT IN WPC.12344/2005 Dated 12/07/2005
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APPELLANTS: PETITIONERS
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1. FOOD CORPORATION OF INDIA,
REGIONAL OFFICE, THIRUVANANTHAPURAM,
REPRESENTED BY SENIOR REGIONAL MANAGER.

2. THE DISTRICT MANAGER,
FOOD CORPORATION OF INDIA,
DISTRICT OFFICE, KOCHI.

BY ADV. SRI.P.JACOB VARGHESE, SC, FCI

RESPONDENTS: RESPONDENTS
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1. K.N.SIVAN, KUTTATHIPARAMBIL HOUSE,
NAMBIAPURATH ROAD, PALLURUTHY, KOCHI-6.

2. REGIONAL LABOUR COMMISSIONER (CENTRAL),
KENDRIYA SHRAM SADAN, OOLIMUGHAL,
KAKKANAD-682 030.

3. ASSISTANT LABOUR COMMISSIONER (CENTRAL),
KENDRIYA SHRAM SADAN, OOLIMUGHAL,
KAKKANAD-682 030.

BY ADV. SRI.ASOK.M.CHERIAN
SRI.JOHN VARGHESE, ASSISTANT SG
SRI.SANTHOSH.G.PRABHU
BY MR.P.PARAMESWARAN NAIR, ASST. SOLICITOR GENERAL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ALONG WITH W.A.NO.1963/2005 ON 04/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

W.A.Nos.1963 & 1966 of 2005

Dated, this the 4th day of September, 2007

JUDGMENT

H.L.Dattu, C.J.

Service of notice to respondents 2 and 3 is dispensed with.

(2) Food Corporation of India and its District Manager, Kochi are the appellants in these writ appeals. The appellants are calling in question the correctness or otherwise of the orders passed by the learned Single Judge in W.P.(C) Nos.26279 of 2004 and 12344 of 2005 dated 12th July, 2005.

(3) The issues raised in these appeals are the issues considered and decided by this Court in W.A.No.1942 of 2005 and connected cases disposed of on 18th August, 2005. In the aforesaid writ appeal this Court was pleased to observe at paragraph 8 of the judgment as under:

> "8. The above dictum laid down by the apex court, though with reference to the provisions contained in the Industrial Disputes Act, will squarely apply in considering as to whether there is any employee-employer relationship between the appellant and the workmen prior to the introduction of the Direct Payment System. In the light of the dictum laid down by the apex court, it has to be held that there was no employer-employee relationship between the appellant and the workmen prior to the introduction of the Direct Payment System. If so, in the absence of any express provision contained in the Payment of Gratuity Act to rope in such period as service rendered while the workmen were under the employment of third person, the appellants cannot be mulcted with the liability to pay gratuity reckoning such past service as well. The claim if any by the workmen can only be laid against the employer under whom they were employed during that period."

(3) Following the observations made in W.A.No.1942 of 2005 and

connected cases, these writ appeals are also disposed of in the same terms, observations and directions.

Ordered accordingly.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

vns